

“The Obama Administration Rapprochement with Cuba:  
Anatomy of a Policy Failure.”

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## **The Domestic Scene**

The limited economic changes introduced by Gen. Raul Castro in Cuba encouraged some observers in the U.S. to proclaim the end of communism and the dismantling of the totalitarian system in the island.

Notwithstanding Raul Castro's own statements that he was not elected to restore capitalism, these observers insisted on their belief that economic reforms will be deepened and Cuba will march merrily into capitalism or at least a Chinese-style capitalism.

If the objectives of the Castro government were truly to move toward a market economy, it would not limit economic enterprises to some 201 individual activities, i.e. barbershops, shoe shinning, pizza parlors; to lease vacant lands to individual farmers to produce mostly subsistence agriculture; or to liberalize the real estate and auto markets. In addition, the onerous taxes, regulations, and license fees imposed on these activities are not conducive toward the development of free enterprises.

It is very difficult for Gen. Raul Castro to reject his brother's legacy of political and economic centralization. Raul's legitimacy is based on being Fidel's heir. Any major move to reject Fidel's "teachings" would create uncertainty among Cuba's ruling elites – party and military. It could also increase instability as some would advocate rapid change, while others cling to more orthodox policies. Cubans could see this as an opportunity for mobilization, demanding faster reforms.

For Raul, the uncertainties of uncorking the genie's reform bottle in Cuba are greater than keeping the lid on and moving cautiously. For the past five decades, political considerations have always dictated the economic decisions of the communist leadership in the island.

Raul is no Deng Xiaoping, Gorbachev or a pragmatist in military uniform.

Before taking power in 2006, he had been the longest serving Minister of Defense (47 years). He presided over the worst periods of political repression and economic centralization in Cuba and is responsible for numerous executions after he and his brother assumed power, and some while in Mexico and the Sierra Maestra before reaching power.

Raul has been a loyal follower and cheerleader of Fidel's anti-American and pro-Soviet policies and military interventions in Africa and elsewhere.

In 1962, Raul and Soviet Premier Nikita Khrushchev conspired to surreptitiously introduce nuclear missiles into Cuba. Raul supervised the Americas Department in Cuba, approving support for terrorist, guerrilla and revolutionary groups throughout Latin America, and the Middle East.

In 1996 he personally ordered the shooting down of two Brothers to the Rescue unarmed civilian planes in international waters, killing three U.S. citizens and one Cuban-American resident from Florida.

At 85 years of age, General Castro wants to muddle through these difficult times introducing limited changes and maintaining tight political control. His aim is to calm down a growing unhappy population and to prevent a social explosion, not to transform Cuba into a capitalist

society. By his actions and statements, Raul Castro is signaling that Cuba will remain a failed totalitarian experiment for the foreseeable future.

His relinquishing the Presidency to a minor Communist Party bureaucrat in 2018, while remaining as Secretary General of the Communist Party and de facto leader of the military is a clear indication of a succession and not a transition process. The future new President has no military or popular support and will be beholden to the wishes of Raul and his close military allies in the Party's Politburo. The recent creation of a military "troika" to rule over the three regions of Cuba is a further example of a militarized succession in the island.

### **The Foreign Dimension**

President Barack Obama's normalization of relations with Cuba had little impact on General Castro's alliance with Iran, Russia and Venezuela. The closer relations that these countries have developed with Cuba were not affected. Their aid is not conditioned on changes in Cuba. They share with Castro a virulent anti-Americanism. They all share a belief that the world convergence of forces are moving against the U.S. Despite economic difficulties, Cuba is unwilling to renounce these alliances and accept a role as a small Caribbean country, friendly to the U.S.

Since assuming formal power in Cuba in 2006, following Fidel Castro's illness, General Raul Castro has continued his close alliance with Venezuela, Iran, and China and has expanded military cooperation and purchases from Russia. Venezuela's vast purchases of Russian and Chinese military equipment, the close Venezuela-Iran relationship and the Cuba-Venezuela alliance are troublesome. Although it is not known if Venezuela is transferring some of these weapons to Cuba, Caracas remains an open back door for Cuba's acquisition of sophisticated Russian weapons as well as Cuba's principal financial backer. The objectives of this alliance are to weaken "U.S. imperialism" and to foster a world with several centers of power.

Cuba has also renewed military cooperation with Russia. Russia economic and diplomatic support are important to Cuba, especially if they force the U.S. to offer unilateral concessions to Cuba, particularly ending its embargo and allowing American tourists to visit the island. In 2015 Cuba and Russia signed agreements providing the Kremlin with naval and aerial facilities on the island for the Russian military. A Russia's growing presence in the Caribbean, while not challenging the U.S. militarily, allows for Russian power projection, forces the U.S. to increase its defenses and monitoring capabilities on its southern flank and increases the perception in Latin America and elsewhere that the United States, is being challenged in its own sphere of influence by outside powers. This, in turn, weakens American influence in the region and encourages anti-American leaders to take position inimical to U.S. interests.

Raul does not seem ready to provide meaningful and irreversible concessions for a long-term U.S.-Cuba normalization. Like his brother in the past, public statements and speeches are politically motivated and directed at audiences in Cuba, the U.S. and Europe. Avenues for serious negotiations have never been closed as evidenced by the recent diplomatic normalization under President Obama and migrations and anti-hijacking agreements between the United States and Cuba.

Raul is unwilling to renounce the support and close collaboration of countries like Venezuela, China, Iran, North Korea and Russia in exchange for an uncertain relationship with the United

States. At a time that anti-Americanism is strong in Asia, the Middle East and elsewhere, Raúl's policies are more likely to remain closer to regimes that are not particularly friendly to the United States and that demand little from Cuba in return for generous aid.

Yet there is the strong belief in the United States that economic considerations could influence Cuban policy decisions, and that an economically deteriorating situation could force the Castro regime to move Cuba toward a market economy and eventually toward political reforms. This has not happened and is not likely to happen.

Among many in the United States, there is still a belief that the embargo is the cause of Cuba's economic ills. This notion has been propagated continuously by the Castro regime to force the United States to unilaterally lift U.S. sanctions.

In reality, the cause of Cuba's economic problems is not the embargo but a failed economic system. Like the Soviet and Eastern European Marxist economies, Cuba's system is antiquated, inefficient and corrupt. It does not encourage productivity or individual initiative. If Cuba were to export and produce more, it could buy any products it needs from other countries. For Cuba, the United States is the closest but not the cheapest market. What the Castro regime welcomes is American tourists and credits to help scrape by without making major economic or political changes.

Raul Castro has a long-term commitment to remain in power. Compromise is seen as a short-term, sometimes forced, tactical move to achieve long-term strategic objectives. Negotiations with these leaders are usually of little value, and agreements of short duration.

America's long-held belief that, through negotiations and incentives, we can influence Raul's behavior has been weakened by his unwillingness to provide major concessions to the United States. He prefers to sacrifice the economic well-being of the Cubans, rather than cave in to demands for a different Cuba, politically and economically. Neither economic incentives nor punishment have worked with Cuba in the past. They're not likely to work in the future.

Cuba's smuggling of weapons in a North Korean freighter in 2014, during Cuba-U.S. conversations for normalization of relations, indicate Raul's Castro continuous commitment to internationalism and his willingness to violate international laws to support an ally. Like in the 1970's and 1980's when the brothers played a major role in Africa and the Middle East with Soviet support, this incident shows that, even without the backing of a major power, Cuba remains a player in foreign affairs.

In this hemisphere the Castro regime seems to be taking a back-stage role. Cuba's involvement in regional groups is limited, with Raul Castro preferring to deal in bilateral relations. Raul prefers to take a behind the scene role, especially in his espousal of anti-Americanism, to not jeopardize his chances of getting further unilateral concessions from the United States. Raul will leave Maduro and others to carry on the more vocal anti-American struggle.

### **After Raul**

If Raul Castro were to die or become incapacitated, it will be the Politburo of Cuba's Communist Party who will decide on a replacement. While Raul designated Miguel Diaz Canel as his successor, his promotion will depend on circumstances at the time. If the succession occurs under increased social pressure or violence, it is likely that the Politburo will select a hard liner,

probably from the military. Given that most of the members of the Politburo are military, this group will make the ultimate decision. Although Diaz Canel also has military rank, it is not likely that the Generals in the Politburo will turn to him at a time of crisis.

If the succession is peaceful and Diaz Canel assumes the presidency in 2018, he has to contend with the power of the older generals, Raul and Raúl's son Alejandro Castro Espin, a colonel/coordinator of the military and security apparatus and an emerging force. Without support within the military or the party, Diaz Canel remains a puppet figure with limited power.

The key question about post-Castro Cuba is not who its new rulers will be or what they would like to accomplish. The key question is whether the institutionalization of the revolution under the control of the military, the party and the security apparatus will survive the transition from Raul Castro's rule. And equally important, what can any emerging leadership hope to accomplish within the existing socio-political and economic context.

There are also other key and more troubling questions: Will the new rulers be able to exercise any major options at all? Will they fear upsetting the multilevel balance of interests upon which new government will certainly depend?

The impediments to major change are significant:

- A terrorized, disorganized and fearful population hoping for change from above. There is a strong belief among the Cuban people about the efficacy of the security services and an overwhelming fear of their repressive capabilities. The political elite see the development of a civil society as a major challenge to its absolute authority and a threat to its long-term control. The limited gains made by a civil society independent of the Castro brothers in the past few years, are the result of a deteriorating economy; disillusionment with the revolution and growing unhappiness with the Castro regime; influence of outside forces; and a limited relaxation of the system's control. Yet civil society remains weak, not very effective and watched carefully and constantly by the security forces.
- The military, the most important institution in contemporary Cuba, has significant legitimacy and respect and is a disciplined and loyal force. It controls more than 60 % of the economy. Will they be willing to relinquish this economic control and their prominent role? One of Cuba's major post-Castro challenge will be how to extricate the military from the economy and put them back in the barracks.

The possibility of regime continuity, therefore, seems stronger for Cuba than it was for other communist states. Although their end came suddenly, it took decades of decay to weaken critically the Eastern European regimes and successive leadership changes, as well as Soviet disengagement and acceptance, before the collapse.

### **Post-Castro Challenges**

The critical challenge for a post-Raul regime will be to improve the economy and satisfy the needs and expectations of the population, while maintaining continuous political control. Too rapid economic reforms may lead to a loosening of political control, a fact feared by the military, and other allies bent on remaining in power and continue to profit from their privileged positions.

Other issues facing a post-Castro government may include: 1) taming the military; 2) decreasing racial tensions; 3) ending corruption; 4) dealing with a restless labor movement; 5) developing an acceptance and obedience of the new legal system; and 6) instilling in the population a willingness to sacrifice to build a new Cuba.

When the Castro era comes to an end, the Cuban people will face the monumental task of building a new political and economic system out of the remnants of the old. If the recent history of the Western Hemisphere serves as a guide, they will reject Castro's totalitarian legacy and embrace instead the ideas of democracy, free-market economics, and the rule of law. The development of a new political and economic system based on these ideas will require a new constitution, which will lay the foundation for a resurgent Cuba.

Among the principles of that new constitution, none will be more critical to the success of the rebuilding enterprise than the protection of private property rights. Property rights are basic human rights, and an essential foundation for other human rights. Without property rights and freedom to contract, other liberties are impossible.

In the early 1960's the Castro regime confiscated all foreign owned businesses in Cuba as well as the majority of large Cuban owned businesses. The communization of Cuba, which included not only private property, but also the school system, the media, religious organizations, etc. took place in less than two years, the fastest in the history of mankind.

Included among U.S. confiscated companies were Texaco and Esso (Exxon Corporation) oil refineries; ITT; Cuban Electric Co.; MOA Bay Mining Company; United Fruit Sugar Company and North American Sugar Industries, Inc. Cuban companies included Bacardi; the Arechabala rum company (Havana Club); all sugar mills and all banks. The Cuban government has never paid for any of these properties. The value of American properties was estimated at \$1.8 billion at the time. With interest accumulated at 6% for the past half century, Cuba's debt is estimated at more than \$8 billion. There are no estimates for the value of properties confiscated to Cubans.

The constitutional protection of private property rights is a matter not only of principle, but also of economic necessity. As a matter of principle, a system of private property rights adequately protected by law and free of excessive restriction is a necessary condition to the development of free-market democracy.

Such a system will also be needed as a matter of economic reality for Cuba to have any hope of attracting sufficient investment capital to rebuild its economy. No capital will flow to Cuba in the amounts that Cuba needs, absent strong and credible guarantees that private property and enterprise will enjoy at least as much protection in Cuba as in the competing capital-importing nations of the hemisphere. Property rights have to be firmly established under the Rule of Law in order to lay the foundation for a merit-based economy. Strong legal protections for property rights will also foster the growth of the Cuban economy by creating the incentive to use property efficiently.

The restoration of property rights is an imperative of fundamental fairness. The cardinal principal in the restoration of property rights is that it be carried out transparently and equitably. It is also a goal supported by sound political and economic reasons. Politically, a property-restoration program will legitimize the new government in the eyes of the former owners and

will show to the international investment community that the protection of property rights in the new constitution is not an empty promise.

Economically, the program will provide a means of resolving claims on confiscated property and privatizing enterprises and assets still held by the Cuban state. An orderly and predictable program to resolve conflicting claims to property should encourage capital investment by foreign and exiled entrepreneurs. Rapid privatization of state-owned property, especially by means of restitution to dispossessed owners, should promote efficient use of the property, greater productivity, and economic growth. In sum, the redress of the wrongs suffered by the dispossessed owners at the hands of the Castro regime is an essential component of the system of property rights to be defined and protected in the new constitution.

The confiscations and expropriations by the Castro government violated the Cuban constitution and consequently were unlawful. Specific provisions must be made to restore property rights in Cuba and as part of that restoration, Cuba should establish a mechanism to either return expropriated properties to their rightful owners or compensate owners for the wrongful expropriation of their property.

Cuba should provide remedies to claimants, both U.S. and Cuban, whose properties were expropriated and insure that those remedies are equivalent even if the Cuban claimant's claims are not protected under international law. It would be unjust as well as politically unpalatable to provide remedies to foreign/U. S. claimants that are not provided to Cuban claimants.

- A restoration program should be instituted designed to provide a flexible combination of remedies that include restoration, monetary compensation and compensation in kind.
- In some cases, monetary compensation alone is insufficient to compensate a prior owner. Accordingly, flexibility must be provided in order to balance the equities and provide appropriate relief.
- A program which favors restitution, seeks to weigh numerous factors such as 1) the principles at stake, 2) the feasibility of restitution, 3) the physical condition, legal status and current use of the property, 4) the possibility of uneven transfers, 5) the need to foster the productive use of the property, and 6) the financial resources available to a post Castro Cuba.
- Original owners and their heirs or successors in interest would be entitled to pursue claims for restitution and any subsequent bona fide holders of the properties, as secondary beneficiaries of the program, would be entitled to compensation. The Cuban state, any Cuban governmental entity, any individual or entity who obtained property through the exploitation of a position of power in the Castro regime, without paying reasonably equivalent value or anyone who acquired title from any ineligible party without providing reasonable value in exchange for the property would be ineligible for participation.
- Compensation includes interest and requires calculation of the amount of compensation in Cuban pesos and then payment at the buy free market rate in U.S. Dollars. Payment may be in cash or debt obligation of the Cuban Treasury or a combination of those.

The importance of resolving claims to expropriated property should not be underestimated. Foreign aid from and trade with the United States will be unavailable until the claims of at least United States nationals are resolved. (Under United States law, resolution of the claims of U.S. nationals is a precondition to lifting the embargo and permitting United States aid to Cuba to resume). Moreover, without resolution of these claims, new investments will be slow to come due to the uncertainty of investing in properties with a cloud on title and competing claims to ownership.

### **The Havana Club Case**

The Castro government confiscated the Arechabala distillery in Cuba and its Havana Club trademark in 1960. Bacardi purchased the rights to the HAVANA CLUB trademark from the creators and original owners – the Arechabala family – who manufactures their rum in Cuba from the 1930s until 1960 and exported it to the U.S. and other countries until their rum-making facilities and personal assets were seized without compensation during the Cuban revolution.

Bacardi has been selling Havana Club rum (made in Puerto Rico) in the U.S. since the mid-1990s, except when temporarily suspended to defend litigation brought against it by Cuba's joint-venture partner, Pernod Ricard. After numerous legal battles, the Cuban government's illegally obtained U.S. trademark registration for the brand expired in 2006.

U.S. courts have consistently ruled that the Cuban joint-venture has no rights to the Havana Club trademark in the U.S.

Previous U.S. administrations have denied license applications from the Cuban government seeking the rights to maintain Cuba's illegally obtained U.S. trademark registration for Havana Club. Without having the appropriate license from the U.S. government, the Cuban government was not able to renew its illegally obtained trademark registration. However, the Obama Administration took actions without transparency to allow the Cuban government to resurrect this dead registration. The U.S. government allowed Cuba to renew the expired U.S. trademark registration.

*First*, a license should have not been granted for the same reasons that led Congress to enact Section 211. This provision reflects Congress' judgment that the Cuban government should not be allowed to renew the registration for a trademark such as Havana Club, which it would not possess but for its confiscatory actions, without the express consent of the original owner or its successor-in-interest. If the Cuban government wishes to maintain such a registration in force, it should offer to the legitimate owner (or its bona fide successor-in-interest) the fair compensation that it has withheld for over fifty years. In Section 211, Congress devised a mechanism to acknowledge the rights and interests of the victims of Cuban confiscations regarding U.S. trademarks and prevent expropriators from using the U.S. regulatory and court system to their advantage. That mechanism and the policies underlying it should be respected.

*Second*, Section 211 as a whole reflects the United States' well established public policy against giving extraterritorial effect to foreign confiscatory actions purporting to affect property in the United States. In this case, Congress has applied this principle to U.S.



trademarks (such as Havana Club) that the Cuban government would not have been able to acquire if it had not confiscated the businesses that owned those trademarks.

*Third*, granting a specific license in the case of Havana Club erodes Section 211. While there may be cases in which a specific license might be justified, granting one in this case thwarts the legislative intent to protect the original owners of confiscated property.

The Trump administration should revoke the Cuban government's U.S. Treasury license and categorically oppose the confiscation of private property by foreign countries.